

2005 Report on the State Bar of California Discipline System



**The State Bar of California
April 2006**

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Published April 2006

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INTRODUCTION

The State Bar of California (State Bar) has been in existence since 1927 as a non-profit public corporation and as the administrative arm of the California Supreme Court in matters involving the admission, regulation and discipline of attorneys.

The State Bar is an integrated bar: all lawyers practicing in California must be active members. As of December 31, 2005, the number of active attorneys in California was approximately 152,000, making the State Bar the largest integrated state bar in the nation.

The State Bar is governed by a Board of Governors, which consists of 22 members and the President of the State Bar. Fifteen are lawyers elected by members of the State Bar. The Board of Directors of the California Young Lawyers Association elects a 16th lawyer.

Since 1977, the State Bar has operated with increased involvement by the public. Beginning that year, six "public," non-lawyer members were appointed to the Board of Governors – four by California's Governor, one by the Senate Committee on Rules and one by the Speaker of the Assembly.

One of the most important functions of the State Bar is to protect the public, courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. Most of the 2005 annual membership fee of \$390 supports the State Bar's public protection programs. In 2005, General Fund expenditures totaled \$51,593,000. Of this amount, \$42,480,000 was expended directly on Discipline programs.

As the following pages address in more detail, the units of the State Bar that contribute to the important function of discipline or, more broadly, public protection are:

Office of the Chief Trial Counsel: is responsible for the receipt, investigation and prosecution of complaints against California attorneys.

State Bar Court: serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys.

Client Security Fund: reimburses victims for losses due to attorney theft or acts equivalent to theft.

Office of Probation: monitors attorneys who have been ordered to comply with certain conditions relating to State Bar disciplinary matters.

Mandatory Fee Arbitration: administers a statewide program for the arbitration of fee disputes between attorneys and their clients.

Professional Competence: assists the State Bar's ongoing efforts to improve the quality of legal services by maintaining and enhancing the professional standards of California lawyers.

Office of Certification: develops standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law and administers such programs.

The State Bar also offers hundreds of classes, seminars and workshops to attorneys annually to help them meet Minimum Continuing Legal Education (MCLE) requirements, making The State Bar one of the largest MCLE providers in the state.

OFFICE OF THE CHIEF TRIAL COUNSEL

The State Bar Board of Governors, through its Regulation, Admissions and Discipline Oversight Committee, has oversight responsibility for the State Bar's disciplinary activities. The Chief Trial Counsel, who reports directly to this Board Committee pursuant to statute, is responsible for the overall structure, goals and management of the Office of the Chief Trial Counsel (OCTC). OCTC's Intake Unit and four Investigation/Trial Units screen, review, analyze, investigate and prosecute allegations of attorney misconduct. OCTC's Audit and Review Unit reviews this work upon request and conducts random audits of OCTC's files.

The Intake Unit

One of the Intake Unit's primary functions is to staff the State Bar's toll-free 1-800 telephone line (1-800-843-9053). Many of the public's initial contacts with the State Bar are made through this 1-800 number. An extensive telephone tree guides callers to information addressing their specific concerns or issues. Callers hear pre-recorded messages and receive answers to their most frequently asked questions. Callers to the 1-800 number may also order complaint forms without speaking directly to staff.

The telephone tree is available in both English and Spanish. OCTC also has staff available that speak Cantonese, Hungarian, Korean, Mandarin, Russian, Spanish and Tagalog for callers who need assistance in those languages. For callers with spoken or written communication needs in other languages, OCTC provides translation services at no charge.

In 2005, 70,902 calls were received at the 1-800 number. However, telephone calls are no longer the primary indicator of the Intake Unit's workload. The State Bar's web site contains extensive information on the attorney discipline system in California, including a digital attorney complaint form for those who wish to download it. From July 2004 to December 2005, approximately 65,500 complaint forms have been downloaded.

1-800 Telephone Line: Basic Data					
	2001	2002	2003	2004	2005
Total telephone calls received	110,120	110,343	116,800	89,823*	70,902*
* OCTC attributes the lower number of calls to the 1- 800 telephone number to 1) the addition of 4 new trunk lines in January 2004 and a corresponding reduction in the busy rate and 2) the increased use of the State Bar's web site to obtain information and to download complaint forms.					

The intake process begins with OCTC's receipt of an inquiry: a written complaint by a client, the court, opposing counsel or other member of the public against a California attorney. The State Bar can also open its own inquiry (called a State Bar Investigation, or SBI) based upon a news article, a court opinion or any other information obtained or received by the State Bar. The Intake Unit evaluates each inquiry received to determine whether it can be resolved immediately or whether it should remain in the Intake Unit for informal, preliminary investigation and resolution. Resolution entails either advancing the inquiry to an Investigation/Trial Unit or closing the inquiry.

Inquiries					
	2001	2002	2003	2004	2005
Inquiries opened	11,138	11,784	11,947	12,383	11,620

An inquiry is advanced to an Investigation/Trial Unit if the Intake Unit determines that the inquiry, either on its face or following preliminary investigation, alleges facts constituting a violation of the Rules of Professional Conduct and/or the State Bar Act and, assuming the allegations contained in the inquiry are true, would likely result in discipline. Each of the allegations of professional misconduct contained in the inquiries received in 2005 fell into one of the following eight areas: performance (e.g., failure to perform, failure to communicate); duties to clients (e.g., misrepresentations to client, representation of interests adverse to client's interests); handling of funds (e.g., commingling, misappropriation, failure to properly maintain client trust account records); personal behavior (e.g., commission of a crime, moral turpitude, practice of law while suspended); interference with justice (e.g., advising a client to violate the law, disobedience with a court order); fees (e.g., exorbitant or unconscionable fees, division of fees with non-attorneys); duties to the State Bar (e.g., failure to cooperate in State Bar investigation, failure to comply with discipline); or professional employment (e.g., improper solicitation, improper advertisements).

Allegation Categories by Percent					
	2001	2002	2003	2004	2005
Performance	34%	34%	38%	35%	37%
Duties to clients	17%	15%	15%	16%	16%
Handling of funds	12%	13%	8%	10%	11%
Personal behavior	11%	13%	14%	12%	10%
Interference with justice	10%	10%	12%	9%	9%
Fees	10%	10%	11%	12%	11%
Duties to State Bar	5%	4%	0	4%	5%
Professional employment	1%	1%	1%	1%	1%
<u>TOTAL</u>	100%	100%	100%	100%	100%

An inquiry is closed in the Intake Unit if it does not allege facts constituting a violation of the Rules of Professional Conduct and/or the State Bar Act or if, assuming the facts contained in the inquiry are true, it would not result in discipline.

In 2005, the Inquiry Unit resolved 13,158 inquiries. 3,196 were advanced to an Investigations/Trial Unit. The basis for the closure of the remaining inquiries is detailed on the following page in the table entitled, "Closed Inquiries – Dispositions."

Inquiries – Dispositions					
	2001	2002	2003	2004	2005
Inquiries advanced to investigation	3,089	3,656	2,969	3,770	3,196
Inquiries closed	10,967	10,835	10,609	10,477	9,962
<u>TOTAL</u>	14,056	14,491	13,578	14,247	13,158

The Intake Unit strives to resolve every opened inquiry within 60 days of its receipt. However, many inquiries opened in late 2005 were resolved in early 2006. Similarly, many inquiries opened in late 2004 were resolved in early 2005. As a result, the number of inquiries opened in any given year does not necessarily equal the number of inquiries resolved that year. For example, the Intake Unit opened 11,620 inquiries in 2005 and resolved 13,158 inquiries that same year.

Closed Inquiries – Dispositions					
	2001	2002	2003	2004	2005
Alternative Dispute Resolution	0	27	73	149	119
Complaining witness' failure to cooperate	384	392	516	401	258
Criminal conviction complaint*	633	612	758	944	905
Attorney disbarred in separate matter	22	37	51	41	30
Duplicate complaint	100	156	119	77	56
Fee arbitration matter**	535	481	361	464	535
Insufficient facts/evidence	5,078	6,796	6,789	6,356	5,968
OCTC lacks jurisdiction	126	285	145	151	136
Matter resolved between complaining witness and attorney	207	233	222	280	198
Attorney resigned with charges pending	230	280	262	267	283
Other	3,652	1,536	1,313	1,347	1,474
<u>TOTAL</u>	10,967	10,835	10,609	10,477	9,962

* In the case of a Criminal Conviction complaint where an attorney is charged with a felony or misdemeanor, the Intake Unit closes the inquiry and opens a new case in which the conviction is monitored. If the attorney is ultimately convicted of a felony, a misdemeanor involving moral turpitude or other misconduct affecting the practice of law, the Intake Unit transmits the conviction to the State Bar Court pursuant to Bus. & Prof. Code § 6101. See the table below entitled "Criminal Case Monitoring Activity" and accompanying text for more information.

** In the case of a fee arbitration complaint, the Intake Unit closes the inquiry and refers the complaining witness to the Office of Mandatory Fee Arbitration. See the Office of Mandatory Fee Arbitration data and accompanying text included in this Annual Report below.

Under the Business and Professions Code, courts and insurers must report specified types of civil activities by attorneys to the State Bar, financial institutions must report insufficient fund activity in client trust accounts to the State Bar and attorneys are required to self-report certain actions to the State Bar.

Specifically, sections 6086.7 and 6086.8(a) require courts to notify the State Bar of:

- Any final order of contempt imposed against an attorney under certain circumstances;
- Any modification or reversal of a judgment in a judicial proceeding that is based in whole or in part on the misconduct, incompetent representation or willful misrepresentation of an attorney;
- The imposition of any judicial sanctions against an attorney under specified circumstances;
- The imposition of specified civil penalties upon an attorney; and
- Any judgment against an attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty or gross negligence committed in a professional capacity.

Section 6086.8(b) requires insurers or licensed surplus brokers providing professional liability insurance to notify the State Bar of every claim or action for damages for fraud, misrepresentation, breach of fiduciary duty or negligence committed in a professional capacity against an attorney that the insurer or licensed surplus broker insures.

Section 6091.1 requires any financial institution, including any branch, which is a depository for attorney trust accounts to report to the State Bar any instance of insufficient funds presented against an attorney's client trust account, irrespective of whether the instrument is honored.

Section 6086.8(c) requires attorneys who do not possess professional liability insurance to report to the State Bar any settlement, judgment or arbitration award regarding every claim or action for damages against the attorney for fraud, misrepresentation, breach of fiduciary duty or negligence committed in a professional capacity.

And section 6068(o) states that it is the duty of an attorney to report to the State Bar:

- The filing of three or more lawsuits against that attorney in a 12-month period for malpractice or other wrongful conduct committed in a professional capacity;
- Any entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty or gross negligence committed in a professional capacity;
- The imposition of judicial sanctions against the attorney under specified circumstances;
- Any indictment or information charging a felony against the attorney;
- Any conviction of the attorney of a felony or of a specified misdemeanor;
- The imposition of discipline against the attorney by any professional or occupational disciplinary agency or licensing board; and
- Any reversal of judgment in a proceeding based in whole or in part upon the attorney's misconduct, grossly incompetent representation or willful misrepresentation.

The Intake Unit evaluates all of these statutorily mandated reports, or "reportable actions." In 2005, the Intake Unit received 2,271 reportable actions.

Reportable Actions – Received					
	2001	2002	2003	2004	2005
Banks	2,853	3,229	2,631	2,651	1,946
Courts	108	156	118	120	102
Insurers	398	416	368	214	153
Attorneys-self reports	120	97	92	87	70
<u>TOTAL</u>	3,479	3,898	3,209	3,072	2,271

If a reportable action warrants State Bar action or if the attorney fails to satisfactorily respond to the Intake Unit's letter to him or her regarding the violation alleged in the reportable action, the inquiry is advanced to an Investigation/Trial Unit.

Inquiries and Reportable Actions – Advanced to Investigation/Trial Unit					
	2001	2002	2003	2004	2005
Inquiries advanced to investigation	3,089	3,656	2,969	3,770	3,196
Reportable actions advanced to investigation	840	1,060	509	508	333
<u>TOTAL</u>	3,929	4,716	3,478	4,278	3,529

Under Business and Professions Code section 6101, district attorneys, city attorneys and other prosecuting agencies are required to inform the State Bar if an attorney is charged with a felony or misdemeanor. Upon receipt of such information, the Intake Unit opens a new case in which the Unit monitors the criminal matter to final disposition and, if the attorney is convicted of a felony, a misdemeanor involving moral turpitude or other misconduct affecting the practice of law, the Intake Unit transmits the conviction to the State Bar Court. The State Bar Court may issue an order placing the attorney on interim suspension, refer the matter to its hearing department for hearing on specified issues or recommend to the California Supreme Court that the attorney be summarily disbarred. In 2005, OCTC received 283 new criminal cases for monitoring by the Intake Unit.

Criminal Case Monitoring Activity					
	2001	2002	2003	2004	2005
Received during reporting period	204	278	290	368	283
Closed during reporting period*	314	423	284	304	263
Pending at reporting period end	392	263	274	348	362
Convictions transmitted to State Bar Court	92	89	85	74	92
* These cases are closed if: the attorney is acquitted; the charges against the attorney are dismissed; the attorney receives an alternative to sentencing (for example, the court orders the attorney to participate in a diversion program); the attorney is not convicted of a felony or of specified misdemeanors; or the attorney resigns or is disbarred.					

Investigation/Trial Units

Professional investigators in the Investigation/Trial Units receive and investigate inquiries and reportable actions forwarded from the Intake Unit.

At the conclusion of each investigation, an attorney in the Unit decides whether to close the complaint or otherwise resolve the complaint, for example, through the imposition of an informal, confidential resolution, the filing of a stipulation or the filing of a notice of disciplinary charges.

Investigations – Dispositions*					
	2001	2002	2003	2004	2005
Warning letter	0	69	1	331	286
Resource letter	117	98	19	16	30
Agreement in lieu of discipline	76	39	36	42	39
Dismissal	2,216	2,867	2,205	3,051	2,660
Termination	522	587	563	568	300
Resignation tendered with charges pending	102	88	86	82	63
Stipulation filed**	137	146	154	217	168†
Notice of disciplinary charges (NDC) filed†	309	402	298	405	347‡
* See Glossary for definitions for each of these dispositions.					
** These numbers include only those stipulations filed prior to OCTC's filing of a notice of disciplinary charges (NDC).					
† OCTC files NDCs in disciplinary matters, which include original matters, rule 1-110 (former rule 9-101) violation matters, Bus. & Prof. Code § 6049.1 matters and Rule 955 violation matters. See the table below entitled, "Other Litigation Matters Received" and accompanying text for a description of each of these types of matters, as well as information on disciplinary and regulatory matters received by OCTC. See also the State Bar Court data included in this Annual Report for information on disciplinary and regulatory matters filed by OCTC.					
‡ Stipulations and NDCs may contain one or more complaints against the same attorney. The 168 pre-NDC stipulations filed in 2005 contained 296 complaints; the 347 NDCs filed in 2005 contained 544 complaints.					

The Investigation/Trial Units strive to complete investigations within 6 months or, in the case of investigations designated as complex, within 12 months after receipt of the complaint. Cases pending beyond that time period without closure or resolution are statutorily defined as backlog cases. From 2004 to 2005, OCTC reduced the backlog by 22%.

Open Complaints at Year's End					
	2001	2002	2003	2004	2005
Open 6 months or less	1,328	1,312	1,278	1,316	1,019
7-9 months	306	279	185	156	178
10-12 months	252	138	127	77	93
13-21 months	330	95	214	71	91
21 months plus	147	119	53	66	27
Total Open	2,363	1,943	1,857	1,686	1,408
Open more than 6 months	1,034	631	579	370	389
"Backlog" by statutory definition	809	401	540	402	315
Average pendency of open investigations	232 days	168 days	182 days	163 days	169 days
Average pendency of closed investigations at time of closure	268 days	210 days	202 days	197 days	190 days

The Investigation/Trial Units also take matters worthy of prosecution to trial. Much of the Units' trial work is reflected in the State Bar Court data included in this Annual Report.

In addition to original matters (proceedings initiated by OCTC to determine whether an attorney is culpable of violating the Rules of Professional Conduct and/or the State Bar Act and to assess and recommend or order the appropriate level of discipline), litigation matters handled by the Investigative/Trial Units include other disciplinary matters and regulatory matters. These other disciplinary matters include:

- Rule 1-110 (former Rule 9-101) violation matters to determine whether an attorney has willfully failed to comply with a condition or conditions attached to a private or public reproof as required by Rule 1-110 of the Rules of Professional Conduct and, if so, the discipline to be imposed;
- Business and Professions Code section 6049.1 matters to determine whether a member should be disciplined for professional misconduct committed in another jurisdiction; and
- Rule 955 matters to determine whether an attorney has adhered to a Supreme Court order requiring the attorney to comply with rule 955 of the California Rules of Court.

Regulatory matters include:

- Moral character matters in which an applicant appeals an adverse moral character determination made by the Committee of Bar Examiners;
- Reinstatement matters to determine whether an attorney should be reinstated to membership in the State Bar after the attorney's resignation with or without charges pending or disbarment;
- Business and Professions Code section 6007(b)(1), 6007(b)(2), 6007(b)(3) and 6007(c) matters to determine whether a member should be enrolled as an inactive member pursuant to the Business and Professions Code; and
- Standard 1.4(c)(ii) matters, conducted pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, in which a member seeks to be relieved from actual suspension pursuant to a Supreme Court Order.

Other Litigation Matters Received*					
	2001	2002	2003	2004	2005
Rule 1-110 violation matters	48	29	18	18	31
Bus. & Prof. Code § 6049.1 matters	31	23	18	16	38
Rule 955 violation matters	76	75	65	76	63
Moral character matters	9	7	8	11	13
Reinstatement matters	12	16	21	18	18
Bus. & Prof. Code § 6007(b)(1) matters	1	0	1	1	0
Bus. & Prof. Code § 6007(b)(2) matters	0	6	4	0	4
Bus. & Prof. Code § 6007(b)(3) matters	13	3	3	14	2
Bus. & Prof. Code § 6007(b)(2) & (3) - reactive matters	1	2	5	3	3
Bus. & Prof. Code § 6007(c) matters	8	23	16	2	3
Standard 1.4(c)(ii) matters	9	13	13	17	15
<u>TOTAL</u>	312	271	233	176	190
* This table refers to the number of litigation matters <u>received</u> by OCTC. The State Bar Court data included in this Annual Report lists the number of these types of cases <u>filed</u> .					

The Investigative/Trial Units also handle 6180/6190 cases, conducted pursuant to Business and Professions Code sections 6180 and 6190. Section 6180 permits the State Bar to petition the state courts to assume jurisdiction over an attorney's law practice where the attorney has died, resigned, become an inactive member of the State Bar, been disbarred or been suspended. Section 6190 permits the State Bar to petition the state courts to assume jurisdiction over an attorney's law practice where the attorney has become incapable of devoting adequate time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active member of the State Bar agreed to assume responsibility. In 2005, OCTC opened 33 6180/6190 cases, successfully petitioned the state courts to assume jurisdiction of 16 abandoned law practices and recovered over 10,500 client files.

6180/6190 Cases					
	2001	2002	2003	2004	2005
Cases Opened	14	36	41	31	33
Petitions granted	7	16	18	14	16
Client files recovered*	2,111	3,568	11,282	13,626	10,531
* The number of client files recovered does not include files that were seized by independent attorneys and that are not housed at the State Bar.					

Audit and Review Unit

In August of 2004, OCTC created a new unit called Audit and Review to handle requests from complaining witnesses for review or a “second-look” of a decision by OCTC to close their complaint without disciplinary action. The Audit and Review Unit resolved 1,095 cases in 2005, which includes the resolution of second-look requests received since August 2004 when the Audit and Review Unit was created.

Audit and Review Unit – Second-Look Requests	
	2005
Received during reporting period	1,071
Resolved during reporting period	1,095
Pending at reporting period end	744

The detailed breakdown of the 1,095 cases resolved by the Audit and Review Unit is as follows.

Audit and Review Unit – Dispositions	
	2005
Reopen request denied	897
Reopen request granted	54
Warnings sent to attorney	14
Other*	130
<u>TOTAL</u>	1,095
* These include responses to complaining witnesses who sought additional review after the Audit and Review Unit had denied their second-look requests and files determined not to be second-look requests.	

Audit and Review also conducts random audits of OCTC’s files twice a year and engages in other specifically designated audit and quality assurance measures. Having this specialized unit has helped OCTC standardize its audit procedures, achieve greater uniformity in its results and provide an additional degree of independence to its audit function.

Significant Trends in 2005

During this reporting period, OCTC investigators and investigation and trial attorneys were reorganized into four Investigation/Trial Units. Prior to the reorganization, most cases were handled by a horizontal prosecution system, whereby an Investigations Unit consisting of Investigators and attorney legal advisors investigated allegations of attorney misconduct and then forwarded cases to a separate Trial Unit for prosecution. After the reorganization, four Investigation/Trial Units were created, each one with its own Investigations team and Trial team. Each Investigations team investigates allegations of attorney misconduct and, where appropriate, drafts notices of disciplinary charges and forwards the cases to that same Unit’s Trial team, which is charged with prosecuting the cases. The purpose of the reorganization is to maximize productivity and efficiency.

In conjunction with the reorganization, the Chief Trial Counsel also created a new Training and Legal Resources position. This position is held by a Senior Trial Counsel whose primary responsibilities are: (1) to train and develop educational materials and resources for new OCTC attorneys and staff; (2) to respond to requests made by current OCTC attorneys and staff for programs and resources to improve their productivity and job skills; and,

(3) with the input of the Chief Trial Counsel and his management team, to identify any systemic training issues that exist in the office.

Notably, the number of backlog cases was significantly reduced in 2005. At the end of 2005, the backlog was at 315 cases. This represents a 22% reduction in the number of backlog cases since 2004. A case becomes a backlog case if, after receipt of the complaint, the case is pending without closure or resolution within 6 months of receipt or, for a case designated as complex, within 12 months of receipt.

In 2005, OCTC also began preparing for the implementation of Business and Professions Code section 6126.3 (effective January 1, 2006), which permits the State Bar to apply to a superior court to intervene in and assume jurisdiction over the practice of any non-attorney engaged in the unauthorized practice of law. Section 6126.3(e) sets forth the actions that the State Bar may take in the event that the court grants such a petition. These actions include shutting down the practices, seizing files and returning files to persons and entities that appear to be clients of the non-attorney.

Alternative Discipline Program

The Alternative Discipline Program (ADP), formerly known as the State Bar Court's Program for Respondents with Substance Abuse and/or Mental Health Issues, completed its third full year of operation in 2005. A significant achievement for both OCTC and the State Bar Court, attorneys with substance abuse or mental health issues who are facing disciplinary charges may be referred to the ADP where their cases are handled with the dual objectives of public protection and rehabilitation. Experience is beginning to show that attorneys in the discipline system who participate in a structured recovery program such as the State Bar's Lawyers Assistance Program (LAP) are honoring their obligations to their clients and to the profession. Restitution is being paid, ethics education is being completed and, most important, there has been no recidivism to date among the attorneys who have successfully completed the program.

OCTC no longer resolves discipline cases involving an impaired attorney allowed to continue to practice law without factoring testing, monitoring and treatment into the ultimate discipline.

A referral to ADP begins the process. A referral may be made before, after or in lieu of the filing of a Notice of Disciplinary Charges. Following the referral, the attorney will be evaluated by outside professionals for participation in the program. If the attorney has a substance abuse or mental health issue that is causally related to the misconduct, the attorney may be accepted into the ADP, at which point the attorney will sign a contract and stipulation as to facts and culpability. The contract will require participation in the State Bar's LAP and require compliance with treatment conditions as determined by the evaluation. The ADP judge will issue a decision that includes both a high and low disciplinary recommendation. A recommendation by the State Bar Court for imposition of the reduced or low-end discipline will depend upon successful completion of the ADP imposed and monitored program.

Alternative Discipline Program			
	2003	2004	2005
Attorneys referred to the ADP	52	64	56
Attorneys evaluated for the program	38	68	73
Stipulations/contracts entered into by attorneys	31	32	50

Ethics School and Client Trust Accounting School

Disciplined attorneys are required to attend a day-long course in ethics covering the Rules of Professional Conduct and selected provisions of the State Bar Act. The course identifies issues and solutions to common ethical situations faced by practitioners. Instructors are experienced prosecutors who interact with the attorneys in the class, discussing such topics as the attorney-client relationship, fees and fee agreements, the scope of employment, performing competently and duties to clients during and upon ending the attorney-client relationship. A separate three-hour course that focuses specifically on managing client trust accounts and related duties also is offered. This course, called Client Trust Accounting School, is required of attorneys who are disciplined for client trust account violations. In recent years, both courses have been made available to members who have not been disciplined to assist them in avoiding the most common ethical mistakes. During 2005, 12 courses of Ethics School and 11 courses of Client Trust Accounting School were offered. 314 attorneys completed Ethics School and 99 attorneys completed Client Trust Accounting School.

STATE BAR COURT

The State Bar Court serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys. It is the mission of the State Bar Court to hear and decide cases fairly, correctly and efficiently for the protection of the public, the courts and the legal profession. In 2005, the State Bar Court started its 17th year as the nation's first full-time attorney disciplinary and regulatory court.

The State Bar Court has authority to impose public and private reprovations upon California attorneys who are found to have violated the disciplinary provisions of the California State Bar Act or the Rules of Professional Conduct approved by the California Supreme Court. In cases involving the imposition of more serious degrees of discipline, such as disbarment or suspension, the State Bar Court makes findings of fact, conclusions of law and a recommendation for discipline that is transmitted to the California Supreme Court for review and adoption. In the vast majority of cases, the Supreme Court accepts and imposes the State Bar Court's recommendation. However, the Supreme Court may, in its discretion, modify the State Bar Court's factual findings, legal conclusions or recommended discipline or, in the alternative, return the matter to the State Bar Court for further hearing or other action.

The State Bar Court has two venues (San Francisco and Los Angeles) and is composed of two departments – the hearing department and the review department. The hearing department is the trial level of the State Bar Court and is comprised of five full-time judges (three in Los Angeles and two in San Francisco). The Supreme Court appoints two of the hearing judges. The Governor, Speaker of the Assembly and the Senate Committee on Rules each appoint one hearing judge.

The review department is the appellate level of the State Bar Court. The three-member review department consists of the Presiding Judge and two part-time review judges. The Supreme Court appoints all of the judges of the review department.

There was no judicial turnover in 2005. The terms of the presiding judge and two of the hearing judges will expire in October 2006. Recruitment for these positions began in early 2006.

In 2005, there was a significant transition in the Court's staff managers. In April, the Chief Court Counsel/Chief Administrative Officer was appointed as the Chief Trial Counsel and in July, the Chief Assistant Court Counsel for the Hearing Department was appointed Deputy Chief Trial Counsel. The Chief Assistant Court Counsel for the Review Department served as the Acting Chief Court Counsel/Chief Administrative Officer for the remainder of the year.

The number of new cases filed decreased approximately 15% in 2005 – from 911 in 2004 to 771 in 2005. The number of State Bar Court cases closed decreased 11% in 2005 – from 861 in 2004 to 769 in 2005. Part of the decrease relates to the increased participation in the State Bar Court's Alternative Discipline Program (ADP). The ADP program seeks to identify and refer attorneys with substance abuse or mental health problems to the State Bar's Lawyer Assistance Program for treatment and rehabilitation. At the end of 2004, 108 attorneys were involved in the ADP program. At the end 2005, 152 attorneys were involved, a 41% increase. In order to successfully complete the ADP program, attorneys are required to participate for 36 months from the date of acceptance in the program. However, with earned incentives, the Court may shorten the program term to not less than 18 months. The 18 to 36-month time period resulted in increased pendency of cases and therefore contributed to the decreased number of cases that were closed during the year

State Bar Court highlights and trends that occurred in 2005 included:

- 1 Filings in the State Bar Court in 2005 decreased 15% from 2004 filings.
- 2 The State Bar Court closed approximately as many cases as were filed.
- 3 The average pendency of cases in the State Bar Court hearing department increased from 6 months in 2004 to 7 months in 2005. As noted above, this is due to the increased participation in the State Bar Court's ADP Program.
- 4 As noted above, participation in the ADP program continued to increase in 2005, but early figures for 2006 suggest that participation may level off in 2006.
- 5 The Court began posting hearing department decisions and stipulations in public matters online on the State Bar's web site and continued posting published review department opinions online.
- 6 The State Bar Court continued publication of the *California State Bar Court Reporter* containing the published opinions of the review department in attorney disciplinary and regulatory proceedings.
- 7 The Court continued to actively monitor its progress in achieving the goals of its court performance standards. The Court adopted these standards in the fall of 2004 based on standards developed by the National Center for State Courts.

The following charts provide a detailed look at the number and kinds of cases in the State Bar Court in 2005 and previous years.

Cases Filed and Closed in The State Bar Court Summary Figures

The following charts reflect the numbers of cases filed in the State Bar Court during 2005, as compared to previous years, along with all cases closed by the State Bar Court during 2005.

Cases Filed In The State Bar Court					
	2001	2002	2003	2004	2005
Disciplinary Matters	745	772	664	750	633
Regulatory Matters	172	173	157	161	138
<u>TOTAL</u>	917	945	821	911	771

Cases Closed In The State Bar Court					
	2001	2002	2003	2004	2005
Disciplinary Matters	824	616	619	706	630
Regulatory Matters	159	179	165	155	139
<u>TOTAL</u>	983	795	784	861	769

Detailed figures are provided on the following pages.

Cases Filed And Closed – Disciplinary Matters										
	2001		2002		2003		2004		2005	
Case Type	Filed	Closed	Filed	Closed	Filed	Closed	Filed	Closed	Filed	Closed
Original matter	534	585	556	430	456	424	538	515	427	442
Conviction referral	94	127	89	84	90	77	92	71	93	75
Rule 955 violation	59	56	65	47	46	52	52	48	45	48
Rule 1-110 (former Rule 9-101) violation	16	19	17	12	18	21	15	14	20	9
Probation Revocation	28	24	22	24	37	23	36	42	25	35
Other Jurisdiction (pursuant to Bus. & Prof. Code § 6049.1)	14	13	23	19	17	22	17	16	23	21
<u>TOTAL</u>	745	824	772	616	664	619	750	706	633	630

Description of disciplinary case types

Original matter	A proceeding initiated by the Office of the Chief Trial Counsel to determine whether a member violated the Rules of Professional Conduct or State Bar Act and to assess the appropriate discipline.
Conviction referral	A proceeding to determine whether a member's conviction of a crime involves moral turpitude or other misconduct warranting discipline and, if so, to assess the appropriate discipline.
Rule 955 violation	A proceeding to determine whether a member violated a Supreme Court order to comply with Rule 955 of the California Rules of Court. Rule 955, in part, requires that attorneys who are suspended from the practice of law notify their clients, co-counsel, opposing counsel and courts in which they frequently practice that they are suspended.
Rule 1-110 violation	A proceeding to determine whether a member failed to comply with a condition or conditions attached to a reproof as required by Rule 1-110 of the Rules of Professional Conduct.
Probation Revocation	A proceeding to determine whether a member violated a condition or conditions of probation imposed in the member's prior discipline case.
Other Jurisdiction (pursuant to Bus. & Prof. Code § 6049.1)	A proceeding to determine whether a member should be disciplined in California for professional misconduct committed in another jurisdiction.

Cases Filed And Closed – Regulatory Matters											
	2001		2002		2003		2004		2005		
Case Type	Filed	Closed	Filed	Closed	Filed	Closed	Filed	Closed	Filed	Closed	
Arbitration Enforcement	18	10	19	22	12	11	15	13	12	18	
Resignation with charges pending	101	99	88	93	77	86	82	74	64	65	
Inactive enrollment Bus. & Prof. Code §§ 6007(c), (b)(1), (b)(2) or (b)(3)	20	17	20	22	17	20	13	16	13	9	
Interim remedies Bus. & Prof. Code § 6007(h)	0	0	2	2	2	2	0	0	0	0	
Return to active Bus. & Prof. Code §§ 6007 (b)(1), (b)(2), (b)(3) or (c)	1	2	2	2	3	2	3	4	3	1	
Return to Active Arbitration Enforcement	2	2	3	3	3	3	1	1	0	0	
Relief from Actual Suspension [Standard 1.4(c)(ii)]	9	7	14	7	13	17	17	15	15	14	
Reinstatement	12	15	17	20	21	17	18	21	18	18	
Moral Character	9	6	8	8	8	7	11	11	13	12	
Legal Specialization	0	1	0	0	1	0	1	0	0	2	
<u>TOTAL</u>	172	159	173	179	157	165	161	155	138	139	

Description of regulatory case types

Arbitration Enforcement:	A proceeding to enforce a Mandatory Fee Arbitration award by placing a member on involuntary inactive enrollment until the award has been paid.
Resignation with charges pending	An administrative case that is opened when an attorney voluntarily resigns as a member of the State Bar while a disciplinary investigation or proceeding is pending. No State Bar Court judicial action is required in these cases.
Inactive enrollment pursuant to Bus. & Prof. Code §§ 6007(c), (b)(1), (b)(2) or (b)(3)	<p>A request to enroll a member inactive pursuant to Bus. & Prof. Code §§ 6007(c), (b)(1), (b)(2) or (b)(3):</p> <ul style="list-style-type: none"> • A member poses substantial threat of harm to his or her clients or the public (Bus. & Prof. Code § 6007(c)); • A member asserts a claim of insanity or mental incompetence (Bus. & Prof. Code § 6007(b)(1)); • A court makes an order assuming jurisdiction over the member's practice (Bus. & Prof. Code § 6007(b)(2)); • A member is unable to practice law because of mental infirmity, illness or habitual use of intoxicants or drugs (Bus. & Prof. Code § 6007(b)(3)).
Interim remedies pursuant to Bus. & Prof. Code § 6007(h)	A proceeding to determine whether the State Bar Court should order a full range of interim remedies short of involuntary inactive enrollment, pursuant to Bus. & Prof. Code § 6007(h), including, but not limited, to restriction of practice, conditions of probation and supervision of a member's practice
Return to active pursuant Bus. & Prof. Code §§ 6007 (b)(1), (b)(2), (b)(3) or (c)	A proceeding to determine whether a member should be returned to active status following the member's involuntarily inactive enrollment pursuant to Bus. & Prof. Code §§ 6007 (b)(1), (b)(2), (b)(3) or (c).

Return to Active Arbitration Enforcement	A proceeding to determine whether a member should be returned to active status following the member's involuntarily inactive enrollment for failing to comply with a Mandatory Fee Arbitration award pursuant to Bus. & Prof. Code § 6203(d).
Relief from Actual Suspension [Standard 1.4(c)(ii)]	A proceeding to determine whether a member should be permitted to resume the practice of law where the member has been suspended and has been required to show proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the law prior to returning to active status pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.
Reinstatement	A proceeding to determine whether a resigned or disbarred attorney should be reinstated to membership in the State Bar.
Moral Character	A proceeding to determine whether an applicant possesses the requisite good moral character for admission to membership in the State Bar.
Legal Specialization	A proceeding to review a determination by the State Bar of California's Board of Legal Specialization that a member does not qualify for certification or recertification as a legal specialist.

Dispositions of Case Closures of State Bar Court Cases

Dispositions of Closed Disciplinary Cases					
	2001	2002	2003	2004	2005
Disbarment	52	48	69	60	51
Summary Disbarment	7	2	2	7	7
Suspension	378	306	258	287	261
Reprovals	175	104	131	169	144
Dismissal	44	32	41	55	45
Termination	151	105	105	102	97
Revoke Probation	13	13	10	21	24
Probation	0	0	0	2	0
Extend Probation	3	5	1	1	1
License to Practice Cancelled	1	1	0	0	0
Admonition	0	0	1	0	0
Deny Petition/Application	0	0	1	2	0
<u>TOTAL</u>	824	616	619	706	630
* See Glossary for definitions for each of these dispositions.					

Dispositions of Closed Regulatory Cases					
	2001	2002	2003	2004	2005
Grant Relief from Actual Suspension Standard [Standard 1.4(c)(ii)]	6	4	12	9	7
Decline Relief from Actual Suspension [Standard 1.4(c)(ii)]	0	1	2	2	4
Transfer Inactive pursuant to Bus. & Prof. Code §§ 6007(b), (c) or (e), or Fee Arbitration	19	28	23	18	12
Decline Transfer to Inactive pursuant to Bus. & Prof. Code § 6007 (c) or Fee Arbitration	1	1	3	1	0
Grant Petition for Reinstatement/Admission Application	7	3	9	6	7
Deny Petition for Reinstatement/Admission Application	6	10	4	10	8
Restrict practice pursuant to Bus. & Prof. Code § 6007(h)	0	2	2	0	0
Return to Active status pursuant to Bus. & Prof. Code §§ 6007 (b), (c) or (e), or Fee Arbitration	4	5	5	4	2
Resignation/Charges Pending	99	92	84	74	64
Dismissal	9	9	5	14	11
Termination	4	5	4	2	1
Withdrawn	4	19	12	15	23
<u>TOTAL</u>	159	179	165	155	139

Description of regulatory dispositions

Grant Relief from Actual Suspension Standard [Standard 1.4(c)(ii)]	The State Bar Court grants a member's request to lift actual suspension as the member demonstrates proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the law before returning to active status.
Decline Relief from Actual Suspension [Standard 1.4(c)(ii)]	Denial of a member's request to lift actual suspension as the member does not demonstrate proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the law before returning to active status.
Transfer Inactive pursuant to Bus. & Prof. Code §§ 6007(b), (c) or (e), or Fee Arbitration	<p>The State Bar Court grants the State Bar's request to order a member involuntarily inactive based on Bus. & Prof. Code § 6007:</p> <ul style="list-style-type: none"> • The member asserts a claim of insanity or mental incompetence (Bus. & Prof. Code § 6007(b)(1)); • The court makes an order assuming jurisdiction over the member's practice (Bus. & Prof. Code § 6007(b)(2)); • The Court finds that the member is unable to practice law because of mental infirmity, illness or habitual use of intoxicants or drugs (Bus. & Prof. Code § 6007(b)(3)); • The member poses substantial threat of harm to his or her clients or the public (Bus. & Prof. Code § 6007(c)). <p>Or the State Bar Court grants the State Bar Mandatory Fee Arbitration Program's request to enroll a member involuntarily inactive due to the member's non-compliance with a Fee Arbitration Award.</p>
Decline Transfer to Inactive pursuant to Bus. & Prof. Code § 6007 (c) or Fee Arbitration	<p>Decline of a request to transfer a member to inactive status pursuant to</p> <ul style="list-style-type: none"> • Bus. & Prof. Code § 6007(c) (substantial threat of harm to their clients or the public) or; • By request of the State Bar's Mandatory Fee Arbitration Program.
Grant Petition for Reinstatement/Admission Application	<p>Granting of:</p> <ul style="list-style-type: none"> • Petitioner's request for reinstatement following resignation or disbarment or; • Granting of an applicant's request for determination of good moral character.
Deny Petition for Reinstatement/Admission, Application	<p>Denial of:</p> <ul style="list-style-type: none"> • Petitioner's request for reinstatement following resignation or disbarment or; • Applicant's request for determination of good moral character.
Restrict practice pursuant to Bus. & Prof. Code § 6007(h)	The Court grants a request to restrict a member's practice based on Bus. & Prof. Code § 6007(h) to protect present and future clients. Restrictions include, but are not limited to: restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors.

Return to Active status pursuant to Bus. & Prof. Code §§ 6007(b), (c) or (e), or Fee Arbitration

The State Bar Court grants a member's request to lift an involuntary inactive enrollment based on Bus. & Prof. Code § 6007:

- The member asserts a claim of insanity or mental incompetence (Bus. & Prof. Code § 6007(b)(1));
- The court makes an order assuming jurisdiction over the member's practice (Bus. & Prof. Code § 6007(b)(2));
- The Court finds that the member is unable to practice law because of mental infirmity, illness or habitual use of intoxicants or drugs (Bus. & Prof. Code § 6007(b)(3)).

Or the State Bar Court grants a member's request to terminate an involuntary inactive enrollment that originated from a request by the Mandatory Fee Arbitration Program to enroll the member inactive.

Resignation/Charges Pending

A result of an administrative case that is opened when a member voluntarily resigns as a member of the State Bar while a disciplinary investigation or proceeding is pending. No judicial action is required on these cases.

Dismissal

Dismissal of proceeding.

Termination

A matter is terminated due to the resignation, death or disbarment of the member involved.

Withdrawn

The request of the initiating party is withdrawn.

Significant State Bar Court Orders Affecting Practice

The State Bar Court issues various orders that affect the ability of an attorney to practice law (e.g., transfer to inactive enrollment or interim suspension upon conviction of certain crimes) or that relate to the powers of the Supreme Court that have been delegated to the State Bar Court (e.g., modify probation conditions or extend the time for compliance with the professional responsibility examination).

Also, each case that is considered for participation in the State Bar Court's Alternative Discipline Program requires a written decision. Those decisions do not become final until the respondent successfully completes the Alternative Discipline Program or is terminated from the Program. Those decisions are reflected here as interim dispositions.

Significant Orders Affecting Practice: Summary Figures					
	2001	2002	2003	2004	2005
Disciplinary Matters	175	454	521	545	625
Regulatory Matters	139	5	0	1	1
<u>TOTAL</u>	314	459	521	546	626

Detailed figures are provided on the following pages.

Significant Orders in Disciplinary Matters					
	2001	2002	2003	2004	2005
Conviction orders	87	90	79	78	86
Interim suspension orders	46	56	74	58	64
Professional Responsibility Examination orders	42	44	56	54	86
Suspension orders based on Bus. & Prof. Code § 6007*	0	227	197	181	197
Modification orders	0	0	85	72	62
Alternative Discipline decisions**	--	--	--	64	75
Rejected stipulations	0	36	22	16	19
Extend Probation	0	0	1	10	12
Vacate Previous Order	0	0	5	11	16
Early Termination of Probation	0	0	0	0	8
Miscellaneous	0	1	2	1	0
<u>TOTAL</u>	175	454	521	545	625
* Effective 2002, most of these items were re-categorized as Interim Dispositions					
** 2004 was the first year for tracking Alternative Discipline Program decisions (formerly known as the Pilot Program for Respondents with Substance Abuse and/or Mental Health Issues.)					

Description of significant orders in disciplinary matters

Conviction orders	When the State Bar Court receives notification that a member has been convicted of a crime, the matter is referred for hearing to determine if the crime constituted moral turpitude. If no moral turpitude is found, the matter is referred to determine if there was other misconduct warranting discipline.
Interim suspension orders	The State Bar Court issues orders of interim suspension when a member is convicted of a crime. This category also includes those orders that terminate the interim suspension.
Professional Responsibility Examination orders	The State Bar Court has authority to extend the time that a member has been given to take and pass the Multistate Professional Responsibility Examination. The requirement to take and pass the MPRE is associated with discipline in a previously decided matter.
Suspension orders based on Bus. & Prof. Code § 6007	<p>The State Bar Court can order a member's involuntary inactive enrollment under a variety of situations for the protection of the public. If any of the following circumstances occurs, Bus. & Prof. Code § 6007 allows the court to immediately enroll a member inactive in the pending matter:</p> <ul style="list-style-type: none"> • Recommended discipline is disbarment (Bus. & Prof. Code § 6007(c)(4)); • Respondent's matter is entered into default (Bus. & Prof. Code § 6007(e)(1)); • The Court feels that restricting a member's practice would protect present and future clients. (Bus. & Prof. Code § 6007(h)). <p>These are significant orders that affect a member's practice, but are not the final disposition for these cases. These orders differ from the category of suspensions pursuant to Bus. & Prof. Code § 6007 in the "Final Dispositions" section of this report. In those matters, inactive enrollment is the final disposition. In this category, the inactive enrollments are events that occur prior to the final disposition.</p>
Modification orders	The Court issues an order that significantly modifies a decision or stipulation.

Alternative Discipline Program decisions	Decision written by a State Bar Court Judge before a member can be enrolled in the Alternative Discipline Program. These decisions include findings of facts, conclusions of law and a “high” and “low” level of discipline. The “low” level of discipline is imposed or recommended if the member successfully completes the Alternative Discipline Program. The “high” level of discipline is imposed or recommended if the member does not successfully complete the Program. These decisions are categorized as interim dispositions as the State Bar Court judge must issue a final decision once the member completes the Alternative Discipline Program, either successfully or unsuccessfully.
Rejected stipulations	An order by the State Bar Court judge rejecting the agreement reached between the parties.
Extend Probation	An order extending a respondent’s probation in a disciplinary matter.
Vacate Previous Order	An order that vacates a significant order in a disciplinary proceeding.
Early Termination of Probation	An order that terminates a respondent’s probation before the original end date.
Miscellaneous	Includes denial of request for interlocutory review, extensions of conditions of reprovals and reversal orders.

Significant Orders in Regulatory Matters					
	2001	2002	2003	2004	2005
Modify Decision	0	0	0	1	0
Bus. & Prof. Code § 6007 orders*	139	5	0	0	0
Vacate Submission	0	0	0	0	1
<u>TOTAL</u>	139	5	0	1	1
* Effective 2002, these items were re-categorized as Interim Dispositions in Disciplinary Matters.					

Description of significant orders in regulatory matters

Modify Decision

Significant modification of a regulatory decision.

Bus. & Prof. Code § 6007 orders

The State Bar Court can order a member's involuntary inactive enrollment under a variety of situations. For the protection of the public, if any of the following circumstances occurs, Bus. & Prof. Code § 6007 allows the court to immediately enroll a member inactive:

- Recommended discipline is disbarment (Bus. & Prof. Code § 6007(c)(4));
- Respondent's matter is entered into default (Bus. & Prof. Code § 6007(e)(1));
- The Court feels that restricting a member's practice would protect the public, current and future clients. (Bus. & Prof. Code § 6007(h)). Restrictions include, but are not limited to: restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors.

Prior to 2002, these were categorized as interim dispositions for these regulatory proceedings. However, it was decided that they should be classified as final dispositions and have been moved to the "final" section of the report.

Vacate Submission

The Court vacates the submission of a matter for decision.

Alternative Discipline Program
(Formerly known as the Pilot Program for Respondents with
Substance Abuse and/or Mental Health Issues)

Effective January 1, 2002, Business and Professions Code sections 6230 *et seq.* were added to the State Bar Act. Section 6231 directs the Board of Governors of the State Bar of California to establish and administer an Attorney Diversion and Assistance Program (hereinafter Lawyer Assistance Program). Additionally, section 6140.9 provides that the State Bar shall allocate at least \$10.00 of the annual membership fee paid by active members of the State Bar to offset all or a portion of the cost of establishing and administering the Lawyer Assistance Program. The State Bar has implemented the Lawyer Assistance Program (LAP), which primarily addresses the substance abuse and mental health problems of attorneys who are referred to LAP or who voluntarily seek to participate in LAP. The program offers support and structure to attorneys recovering from these disorders. Experts provide consultations regarding rehabilitation and private support groups are offered to attorneys in the program. The State Bar Court's Alternative Discipline Program addresses the substance abuse and mental health problems of attorneys against whom formal disciplinary proceedings have been initiated in the State Bar Court (hereinafter respondents).

The Alternative Discipline Program represents the first comprehensive program in the United States for addressing the identification, assessment and treatment of substance abuse and mental health problems of respondents in the discipline process. The Alternative Discipline Program is designed to protect the public, the courts and the legal profession, while respondents with substance abuse or mental health problems receive assistance with rehabilitation. The Alternative Discipline Program has a close and mutually beneficial relationship with LAP. The Alternative Discipline Program neither duplicates the LAP processes nor usurps the clinical function. The Alternative Discipline Program seeks to identify and refer respondents with substance abuse or mental health problems to LAP so that respondents so afflicted may be treated and rehabilitated. A respondent must be accepted into LAP in order to be eligible for the Alternative Discipline Program.

Cognizant of its obligation to protect the public, the courts and the legal profession, the State Bar Court retains jurisdiction over those attorneys in LAP that have pending disciplinary proceedings and makes all appropriate judicial decisions, including any determination regarding the respondent's eligibility to practice law while participating in the Alternative Discipline Program.

Commencing in 2002, the State Bar Court implemented a system for handling cases associated with the Alternative Discipline Program. Three stages were developed for categorizing, the first being the referral stage. In a State Bar Court proceeding, when an issue of substance abuse or mental health is raised, the assigned Hearing Judge may refer the matter to the Hearing Judge who presides over the Alternative Discipline Program in the appropriate venue. This referral is solely for the purpose of determining whether the respondent is a potential candidate for the program.

The second stage, the evaluation stage, is estimated to take approximately 90 days. During the evaluation stage, LAP meets the respondent. All respondents who wish to participate in the Alternative Discipline Program must participate in LAP. Once the respondent has signed the LAP Participation Agreement, it is provided to the State Bar Court. The agreement, along with other evidence, is used to establish a nexus between the respondent's misconduct and his or her substance abuse or mental health issue. Also, during the evaluation process, the respondent and the Deputy Trial Counsel submit a stipulation as to facts and conclusions of law, which becomes binding on the parties once the respondent is formally accepted into the Alternative Discipline Program.

Finally, if the respondent is determined to be a good candidate for the Alternative Discipline Program, the State Bar Court judge presiding over the matter prepares a decision stating the high and low levels of discipline. The low level of discipline is the recommended level of discipline to be imposed should the respondent successfully complete the Alternative Discipline Program and the high level of discipline is the level to be imposed if the

respondent is terminated from the program. Also the respondent signs a contract, which details the conditions of the respondent's participation in the Alternative Discipline Program.

The Court's Alternative Discipline Program provides oversight of its participants through status conferences held, at a minimum, every three months. In order to determine the respondent's progress, LAP provides written status reports to the Program Judge upon request. Based on objective data, the reports: (1) confirm the respondent's compliance with the terms and conditions of the LAP Participation Plan, (2) disclose any incidents of non-compliance and (3) provide any relevant case information which can be appropriately shared with the Program Judge in open court.

The respondent is required to participate for a minimum term of 36 months from formal admission into the Court's Alternative Discipline Program. However, with earned incentives, the respondent may complete the program in a minimum of 18 months. No respondent may complete the program without a one-year substance-free certificate from LAP or a recommendation from a mental health professional. It should be noted that probationary conditions may extend beyond the term of the formal Program, thereby requiring continued compliance with the respondent's LAP Participation Plan.

The following charts display the participation levels in the Alternative Discipline Program (ADP) for the last 4 years and show growing year-by-year activity in the Court:

Number of Cases Entering Each ADP Stage During Year					
Participation Level	2001	2002	2003	2004	2005
Referral	--	59	83	91	87
Evaluation	--	53	75	104	117
Full Participation	--	2	42	72	92

Cases/Respondents fully participating in ADP at end of year*					
	2001	2002	2003	2004	2005
Cases	--	2	44	110	180
Respondents	--	1	25	53	90
* Many of the cases in the Alternative Discipline Program are consolidated matters. Many respondents have more than one case in the Program.					

CLIENT SECURITY FUND

The Client Security Fund was established in 1972 through State Bar-sponsored legislation that recognized that disciplinary measures, as well as civil and criminal proceedings, are often insufficient remedies to alleviate the pecuniary losses caused by a lawyer's dishonest conduct in the practice of law. The Client Security Fund is designed as a remedy for legal consumers in addition to, but separate from, discipline. Both discipline and the Fund serve to protect the public. However, disciplinary measures are directed at Respondent lawyers who have engaged in misconduct, while the Fund focuses on the financial losses of individual victims. Since its inception, the Fund has reimbursed applicants approximately \$76 million.

Financed in 2005 by a \$35 annual assessment added to the membership dues paid by California lawyers, the Client Security Fund reimburses an individual victim for losses of up to \$50,000 due to theft or acts equivalent to theft committed by his or her attorney. While the number of dishonest lawyers is extremely low, the losses suffered by their clients can be devastating. The Fund is a cost-effective way of providing victims with reimbursement that is generally not available from any other source. Furthermore, the Fund provides the legal profession with a unique opportunity to promote public confidence in the administration of justice and the integrity of the profession.

Section 6140.5 of the Business and Professions Code requires the Board of Governors to maintain a Client Security Fund and sets forth the State Bar's authority to operate it. The operation of the Fund is currently governed by the Rules of Procedure, Client Security Fund Matters, adopted by the Board in 1985. Under these Rules, the Board must appoint a seven-member Commission to act as the Board's delegate in administering the Fund. The Rules set forth the scope and purpose of the Fund, the authority of the Commission, the requirements for reimbursement, the application process and the confidentiality of Fund records. A Fund Applicant or Respondent lawyer may seek judicial review of a Commission decision in the superior courts of the State under section 1094.5 of the Code of Civil Procedure.

The chart below reflects the activity of the Fund from 2001 to 2005:

Client Security Fund					
	2001	2002	2003	2004	2005
Applications filed	1,114	1,300	1,200	1,321	1,318
Applications processed	1,069	1,286	1,209	1,209	1,386
Applications paid	609	782	701	746	982
Amounts requested	\$11,900,739	\$14,166,217	\$12,221,905	\$13,681,482	\$11,558,645
Amounts paid	\$4,435,212	\$6,597,057	\$5,859,620	\$5,681,455	\$4,648,584

OFFICE OF PROBATION

In the significant majority of cases, attorneys against whom discipline other than disbarment is imposed, are placed on probation by the California Supreme Court or by the State Bar Court. During the period of probation, which typically ranges from one to five years, the disciplined attorney is required to comply with specified probation conditions appropriate to his or her misconduct including, among others (a) the submission of written quarterly probation reports attesting to the attorney's compliance with the State Bar Act, Rules of Professional Conduct and specified probation conditions; (b) prompt response to State Bar inquiries about the attorney's probation compliance; (c) restitution of misappropriated funds or unearned attorney fees to clients; (d) abstinence from the use of alcohol or drugs and submission to random, periodic blood or urine testing; (e) completion of continuing legal education courses; (f) preparation and approval of a law office management plan; and (g) attendance at State Bar Ethics School. In many cases, the attorney is also required to take and pass the Multistate Professional Responsibility Examination. Attorneys who are disbarred, resign from the practice of law with disciplinary charges pending against them or are actually suspended from the practice of law for a period of 90 days or more also are required to comply with the provisions of rule 955 of the California Rules of Court, which requires the attorney to notify his or her clients of the attorney's disbarment, resignation or suspension and to provide the State Bar Court with an affidavit demonstrating his or her compliance with rule 955.

The State Bar's Office of Probation monitors the disciplined attorney's compliance with these and other conditions. Although it is a separate and independent office, until April 2005, the Office of Probation reported directly to the State Bar Court's Administrative Officer. Since April 2005, the Office of Probation has reported directly to the Chief Trial Counsel.

The Office of Probation may negotiate and stipulate to modification of the attorney's probation in appropriate cases, subject to approval by a judge of the State Bar Court. The Office of Probation is authorized to bring a motion in the State Bar Court to revoke a disciplined attorney's probation in the event of a violation of the attorney's probation conditions or report the violations to the Office of the Chief Trial Counsel for disciplinary prosecution. In cases involving the attorney's failure to comply with rule 955, conditions attached to a public or private reproof or an Agreement in Lieu of Discipline, the Office of Probation may report the violations to the Office of the Chief Trial Counsel for disciplinary prosecution.

The chart below reflects the activity of the Office:

Office of Probation		
	2004	2005
Files pending at reporting period end	791	800
Files opened	559	606
Files closed	512	559
Probation revocation motions filed	36	25
Referrals to OCTC for prosecution	10	26

MANDATORY FEE ARBITRATION

Pursuant to Business and Professions Code section 6200 *et seq.*, the State Bar of California administers a statewide program for the arbitration of fee disputes between attorneys and their clients. The State Bar is responsible for overseeing the approximately 44 local bar association fee arbitration programs where the majority of fee arbitration requests are filed. The State Bar program has jurisdiction over fee disputes where: 1) there is no local program; 2) the local program lacks jurisdiction; or 3) a party believes that he or she cannot receive a fair hearing through the local program. In 2005, the Office of Mandatory Fee Arbitration (MFA Office) received 144 requests for fee arbitration and an additional 20 requests for removal from a local program to the State Bar program.

The MFA Office provides direct information to all attorneys and clients concerning their respective rights and obligations under the mandatory fee arbitration program and the post-arbitration enforcement and litigation procedures.

By statute, the State Bar has exclusive jurisdiction to enforce arbitration awards requested by clients after an award for a refund of fees has become binding and final. Business and Professions Code section 6203, subdivision (d) authorizes the assessment of administrative penalties and the involuntary inactive enrollment of attorneys who fail to respond to the enforcement request. The MFA Office processes clients' requests for enforcement of fee arbitration awards served by either the State Bar or the local bar association programs. An attorney's failure to respond to the Client's Enforcement Request results in a motion filed in the State Bar Court requesting that the member be involuntarily enrolled as an inactive member until the award and any administrative penalty assessed have been paid. In 2005, the MFA Office filed 78 Requests for Enforcement of an Award. Of that number, 13 resulted in inactive enrollment motions filed in State Bar Court.

The chart below reflects the activity of the MFA Office:

Mandatory Fee Arbitration Program					
	2001	2002	2003	2004	2005
MFA requests filed with the State Bar	188	134	127	211	144
MFA requests filed with local bar associations*	N/A	1,710	2,570	1,771	1,661
Requests for enforcement of award filed	65	81	86	72	78
* This represents the number of cases assigned by the local bar programs requesting reimbursement from the State Bar.					

Committee On Mandatory Fee Arbitration

The MFA Office also staffs and coordinates the activities of the State Bar Standing Committee on Mandatory Fee Arbitration (MFA Committee). The MFA Committee consists of approximately 16 lawyer and public members, including the State Bar Presiding Arbitrator. The MFA Committee meets approximately six times annually and reports to the Board Committee on Regulation, Admission and Discipline.

The MFA Committee is responsible for reviewing case law and proposing new legislation affecting fee arbitration, providing policy guidance and assistance to the local bar programs, conducting training programs for fee arbitrators throughout the state, issuing written training materials for arbitrators and arbitration advisories, and presenting legal education courses on selected topics concerning attorney fees and the fee arbitration program. All local and State Bar fee arbitration programs must obtain the Board of Governors' approval of its rules of procedures and any amendments made thereto.

Key Accomplishments in 2005

Arbitrator Training Programs

The MFA Committee organized and presented a total of eight (8) three- hour fee arbitrator training programs. Free Minimum Continuing Legal Education (MCLE) credit was offered to attorney arbitrators. A rotating panel of Committee members present the training program. In addition, a binder of training materials prepared by the MFA Committee and produced by the MFA Office staff, featuring an arbitrator handbook and extensive case law summary and index, is distributed to the fee arbitrators who attend the program.

MCLE programs

The MFA Committee presented three (3) programs on attorney's fees issues for MCLE credit for the State Bar 2005 Annual Meeting in San Diego.

State Bar Arbitrator Recruitment Efforts

The State Bar Fee Arbitration panel consists of approximately 380 volunteer arbitrators, consisting of lawyer and lay arbitrators. As a result of concerted efforts by the MFA Office Program Director to recruit new arbitrators, the Board appointed about 80 new fee arbitrators to serve on the panel this year.

Sample Fee Agreements

In 2005, the MFA Committee recommended comprehensive revisions to the State Bar's Sample Written Fee Agreements for adoption by the Board of Governors. The Board adopted the revisions and the Sample Fee Agreements were made available at no charge to members, for the first time in 2005.

Arbitration Advisories

In addition to the MCLE programs, the Committee is responsible for identifying issues of administrative or legal significance in the area of fee arbitration and developing them into written advisories for fee arbitrators. The advisories are distributed to local bar program committees and administrators for dissemination to fee arbitrators. These advisories are also available on the State Bar's website. The Committee published two advisories in 2005. It also published two program advisories for local bar program staff on administrative policies.

Approval of Local Bar Rules of Procedure

The MFA Committee reviews and makes recommendations to the Board of Governors regarding the adoption of or proposed amendments to local bar program rules of procedures. In 2005, the MFA Committee recommended to the Board of Governors revisions to the rules of procedure for five local bar programs.

Model Rules of Procedure

The MFA Committee developed Model Rules of Procedure for local bar programs to use as a template for updating their local rules of procedure. The MFA Committee distributed the Model Rules to the local programs in March 2005.

Advice to Local Bar Programs

The MFA Committee and the MFA Office Program Director provides advice and guidance to the 44 local bar fee arbitration programs in the state on an as-needed basis. The issues and questions presented are addressed in regularly scheduled meetings of the MFA Committee. The MFA Office Director, the Presiding Arbitrator and the MFA Committee Chair informally handle on a daily basis most issues raised by the local programs.

Committee On Mandatory Fee Arbitration					
	2001	2002	2003	2004	2005
Arbitrator training programs (CLE credit)	9	8	9	6	8
Annual meeting programs (CLE credit)	2	2	2	3	3

PROFESSIONAL COMPETENCE

The State Bar's ongoing Competency-based programs to maintain and improve the quality of legal services available in California significantly contribute to the State Bar's efforts in support of public protection and the effective administration of justice.

Rules of Professional Conduct

In 2005, the State Bar President appointed a task force to conduct a study and prepare a report to the Board of Governors on whether California lawyers should be required to disclose if they maintain professional liability insurance and, if so, how such a requirement should be accomplished. If the task force determines disclosure is necessary, it is charged with recommending a plan to implement the requirement. Among the options for implementation anticipated to be considered by the task force are amendments to the California Rules of Professional Conduct, the State Bar Act portion of the California Business and Professions Code or the California Rules of Court. It is anticipated that the task force report will be submitted to the Board of Governors in 2006.

The Commission for the Revision of the Rules of Professional Conduct

In addition to the above task force study, the State Bar's Commission for the Revision of the Rules of Professional Conduct (Commission) continued its multi-year project to conduct a comprehensive review of the State Bar's ethics rules in light of developments over the past 10 years and current trends nationally. The specific charge of the commission is as follows

"The Commission is to evaluate the existing California Rules of Professional Conduct in their entirety considering developments in the attorney professional responsibility field since the last comprehensive revision of the rules occurred in 1989 and 1992. In this regard, the commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the ABA Ethics 2000 Commission, the American Law Institute's Restatement of the Law Third, The Law Governing Lawyers, as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to multidisciplinary practice, multi-jurisdictional practice, court facilitated *propria persona* assistance, discrete task representation and other subjects that have a substantial impact upon the development of professional responsibility standards.

The Commission is to develop proposed amendments to the California Rules that:

1. Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;
2. Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;
3. Promote confidence in the legal profession and the administration of justice; and
4. Eliminate and avoid unnecessary differences between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues."

In 2005, the Commission conducted ten (10) day-long meetings, including a meeting at the 2005 State Bar Annual Meeting. At these meetings, the Commission considered amendments to the following Rules of Professional Conduct: 1-100, 1-300, 1-310, 1-400, 1-600, 2-100, 2-200, 2-300, 2-400, 3-100, 3-110, 3-120, 3-200, 3-210, 3-300, 3-300, 3-310, 3-320, 3-400, 3-500, 3-510 and 3-600; and proposed new rules comparable to American Bar

Association Model Rules 1.3, 1.14, 3.2, 5.1, 5.2 and 5.7. Also considered were a new rule on waiver of the attorney-client privilege and a proposed definition of the term “law firm” as used throughout the rules.

The Commission's E-List, an e-mail distribution group used by the Commission members, liaisons and other subscribers, had the following activity: 169 postings to 82 subscribers for a total of over 13,500 messages. These messages included distribution of meeting notices and agenda materials, as well as, information on recent developments in legal ethics, informal comments and discussions about the Commission's draft rules. Of the 82 total subscribers, 10 were added in 2005. The Commission also received written comment letters from (12) twelve interested persons or groups, including comments from the City Attorney's Department of the League of California Cities and the law firm of Latham & Watkins.

As part of the 2005 State Bar Annual Ethics Symposium held on April 16, 2005 at Loyola Law School, the Commission presented an educational program on several rule amendment issues under consideration including fee splits among lawyers, up-the-ladder reporting by lawyers representing corporations, *ex parte* communications, sale of a law practice and sexual relations with clients. A questionnaire was used to gather the audience feedback on specified rule amendment options. For the 2005 State Bar Annual Meeting, the Commission co-sponsored an educational program with the San Diego County Bar Association Ethics Committee. The program was entitled: “Cutting-Edge Ethics: The Latest Trends in Professional Responsibility and the Rules of Professional Conduct.” Like the symposium presentation, this educational program afforded Commission members an opportunity to obtain informal feedback on the potential direction of certain rule amendments.

The Standing Committee on Professional Responsibility and Conduct

COPRAC's primary activity is to develop the State Bar's advisory ethics opinions. COPRAC also assists the Board of Governors by studying and providing comment on the Rules of Professional Conduct and other laws governing the conduct of attorneys.

In 2005, COPRAC provided commentary on the following: (1) U.S. Senate Bill No. 256 (Bankruptcy Abuse Protection and Consumer Protection Act of 2005) and (2) the ABA Task Force on the Attorney-Client Privilege. On the bankruptcy initiative, COPRAC addressed specific proposed attorney conduct regulations in a letter sent to the bill's author, to Senator Charles Grassley, to Senators Feinstein and Boxer and to the members of the U.S. Senate Judiciary Committee. Regarding the ABA task force, COPRAC submitted a comment letter reporting on the recent California experience in addressing issues of client-lawyer confidentiality under both the evidentiary attorney-client privilege and the ethical duty of an attorney to maintain a client's confidence and secrets. This comment letter included reports on California's addition of a new Rule of Professional Conduct establishing a confidentiality exception for permissive disclosure of information to prevent a criminal act of death or substantial bodily harm in 2004, the California Governor's veto of legislation that would've created a “whistle-blower exception” for attorneys representing governmental agencies and COPRAC's 2002 letter to the U.S. Security and Exchange Commission on proposed federal rules providing for “noisy withdrawal” by attorneys in securities matters.

Ethics Opinions

COPRAC's formal ethics opinions guide members in maintaining their ethical standards. The non-binding opinions are developed in response to questions posed by bar groups or individual members. In 2005, COPRAC finalized the following opinions:

Opinions Published in 2005

Formal Opinion No. 2005-168

ISSUE: Does a lawyer who provides electronic means on his web site for visitors to submit legal questions owe a duty of confidentiality to visitors who accept that offer but whom the lawyer elects not to accept as clients, if the attorney disclaims formation of an attorney-client relationship and a "confidential relationship"?

DIGEST: A lawyer who provides to web site visitors who are seeking legal services and advice a means for communicating with him, whether by e-mail or some other form of electronic communication on his web site, may effectively disclaim owing a duty of confidentiality to web-site visitors only if the disclaimer is in sufficiently plain terms to defeat the visitors' reasonable belief that the lawyer is consulting confidentially with the visitor. Simply having a visitor agree that an "attorney-client relationship" or "confidential relationship" is not formed would not defeat a visitor's reasonable understanding that the information submitted to the lawyer on the lawyer's web site is subject to confidentiality. In this context, if the lawyer has received confidential information from the visitor that is relevant to a matter in which the lawyer represents a person with interests adverse to the visitor, acquisition of confidential information may result in the lawyer being disqualified from representing either.

Formal Opinion No. 2005-169

ISSUES:

1. Does an attorney commit an ethical violation merely by obtaining or using overdraft protection on a Client Trust Account?
2. What are an attorney's ethical obligations when a check is issued against a Client Trust Account with insufficient funds to cover the amount of the check?
3. Must an attorney immediately withdraw earned fees once funds deposited into a Client Trust Account have become fixed in order to comply with the attorney's ethical obligations?

DIGEST:

1. An attorney does not commit an ethical violation merely by obtaining or using overdraft protection on a Client Trust Account, so long as the protection in question does not entail the commingling of the attorney's funds with the funds of a client. Overdraft protection that compensates exactly for the amount that the overdraft exceeds the funds on deposit (plus funds reasonably sufficient to cover bank charges) is permissible, whereas overdraft protection that automatically deposits an amount leaving a residue after the overdraft is satisfied is not. In all cases, banks must report to the State Bar any presentment of a check against a Client Trust Account without sufficient funds, whether or not the check is honored. Although

overdraft protection will not avoid State Bar notification, nor exculpate any unethical conduct that caused the overdraft, it may avoid negative consequences to a client resulting from a dishonored check.

2. When a check is issued against a Client Trust Account with insufficient funds to cover the amount of the check, an attorney must deposit funds sufficient to clear the dishonored check or otherwise make payment, must take reasonably prompt action to ascertain the condition or event that caused the check to be dishonored and must implement whatever measures are necessary to prevent its recurrence. In addition, if a client will experience negative consequences from the dishonoring of the check, the attorney may have to advise the client of the occurrence.
3. An attorney must withdraw earned fees from a Client Trust Account at the earliest reasonable time after they become fixed in order to comply with the attorney's ethical obligations, but need not do so immediately.

Opinions Circulated for Public Comment Period in 2005

Proposed Interim Opinion No. 03-0001 (90-day Comment Period deadline: April, 26, 2005)

ISSUE: Does a lawyer who provides electronic means on his web site for visitors to submit legal questions owe a duty of confidentiality to visitors who accept that offer but whom the lawyer elects not to accept as clients, if the attorney disclaims formation of an attorney-client relationship and a "confidential relationship"?

DIGEST: A lawyer who provides to web site visitors who are seeking legal services and advice a means for communicating with him, whether by e-mail or some other form of electronic communication on his web site, may effectively disclaim owing a duty of confidentiality to web-site visitors only if the disclaimer is in sufficiently plain terms to defeat the visitors' reasonable belief that the lawyer is consulting confidentially with the visitor. Simply having a visitor agree that an "attorney-client relationship" or "confidential relationship" is not formed would not defeat a visitor's reasonable understanding that the information submitted to the lawyer on the lawyer's web site is subject to confidentiality. In this context, if the lawyer has received confidential information from the visitor that is relevant to a matter in which the lawyer represents a person with interests adverse to the visitor, acquisition of confidential information may result in the lawyer being disqualified from representing either.

Proposed Interim Opinion No. 98-0001 (90-day Comment Period deadline: August 23, 2005)

ISSUE: Where an attorney for the plaintiff in a civil rights action has been assigned his client's statutory right to seek attorney fees, what are the ethical considerations for that attorney: (i) when the attorney disagrees with his client's desire to accept a lump sum settlement offer that is insufficient to pay the attorney's fee claim and (ii) when, after being replaced by successor counsel, the first attorney is asked to agree that he will not seek fees either from the government defendant or from his former client? Are there ethical considerations governing the government defendant's attorney in recommending a lump sum settlement to the defendant?

DIGEST: The presentation of a lump sum settlement offer by the defendant, conditioned on a waiver of a statutory right to attorney fees, does not release the plaintiff's attorney from the obligation to communicate with his client regarding the terms, alternatives and consequences of the settlement, while being mindful of the obligation to put the client's interests first. In the event of a disagreement between client and attorney, the attorney may be entitled or required to seek court permission to withdraw. The plaintiff's attorney has no obligation to waive his right to fees, if any, from either his client or the defendant. The defense attorney does not violate any ethical rule by offering a settlement based on a waiver by the plaintiff and his attorney of the right to seek attorney's fees. In light of the fact that the statutory right to seek attorney fees in a civil rights action is given to the plaintiff by statute as a bargaining chip in civil rights litigation, the government attorney may consider in appropriate cases whether to recommend to his client a settlement that includes a waiver of the right to seek fees.

Proposed Interim Opinion No. 03-0005 (90-day Comment Period deadline: September 30, 2005)

ISSUES:

1. Does an attorney commit an ethical violation merely by obtaining or using overdraft protection on a Client Trust Account?
2. What are an attorney's ethical obligations when a check is issued against a Client Trust Account with insufficient funds to cover the amount of the check?
3. Must an attorney immediately withdraw earned fees once funds deposited into a Client Trust Account have cleared in order to comply with the attorney's ethical obligations?

DIGEST:

1. An attorney does not commit an ethical violation merely by obtaining or using overdraft protection on a Client Trust Account, so long as the protection in question does not entail the commingling of the attorney's funds with the funds of a client. Overdraft protection that compensates exactly for the amount that the overdraft exceeds the funds on deposit is permissible, whereas overdraft protection that automatically deposits a fixed amount leaving a residue after the overdraft is satisfied is not. In all cases, banks must report to the State Bar any presentment of a check against a Client Trust Account without sufficient funds, whether or not the check is honored. Although overdraft protection will not avoid State Bar notification, it may avoid negative consequences to a client resulting from a dishonored check.
2. When a check is issued against a Client Trust Account with insufficient funds to cover the amount of the check, an attorney must deposit funds sufficient to clear the dishonored check or otherwise make payment, must take reasonably prompt action to ascertain the condition or event that caused the check to be dishonored and must implement whatever measures are necessary to prevent its recurrence. In addition, if a client will experience negative consequences from the dishonoring of the check, the attorney may have to advise the client of the occurrence.
3. An attorney must withdraw earned fees at the earliest reasonable time once funds deposited into a Client Trust Account have cleared in order to comply with the attorney's ethical obligations, but need not do so immediately.

Proposed Interim Opinion No. 04-0002 (90-day Comment Period deadline: January 20, 2006)

ISSUE: Must an attorney comply with rule 3-300 when entering into a contingency fee agreement that contains a provision for a charging lien?

DIGEST: The inclusion of a charging lien in the initial contingency fee agreement does not create an “adverse interest” to the client within the meaning of rule 3-300 of the California Rules of Professional Conduct. Thus, an attorney entering into a contingent fee agreement need not comply with the requirements of rule 3-300 merely because the agreement includes a charging lien against any recovery in the case. Unlike a charging lien in an hourly case, the charging lien is a natural corollary of the contingency arrangement protecting the attorney while permitting clients to have access to the courts they may not otherwise be able to afford.

In addition to the above ethics opinions, COPRAC also published an article entitled, “An Ethics Primer on Limited Scope Representation.” The article offers guidance to lawyers on both ethical and practical issues that arise when a lawyer provides legal services that are specifically limited by the attorney-client fee agreement. The article was published in the Professional Competence online legal ethics newsletter found at the State Bar’s website and was announced in the January 2005 issue of the California Bar Journal.

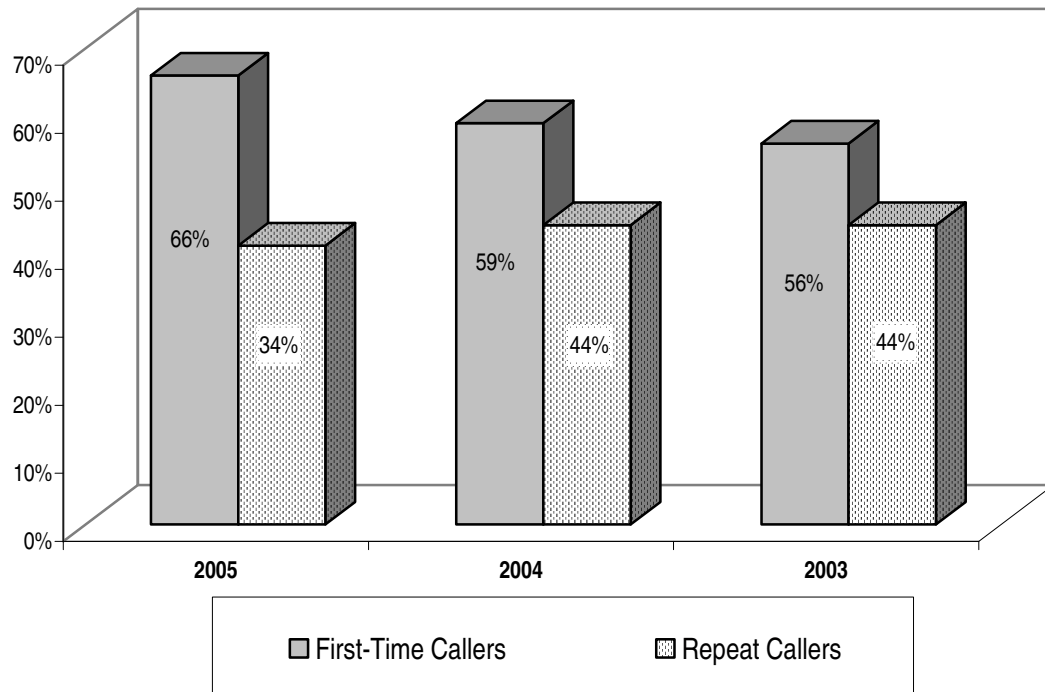
Ethics Hotline

The State Bar’s toll-free statewide confidential service (1-800-2-ETHICS) provides California attorneys with information and research assistance on ethical questions. In 2005, Ethics Hotline staff answered 22,781 calls and distributed 988 packets of local bar association and State Bar ethics opinions to interested persons, and made approximately 6,500 referrals to online resources posted at the State Bar’s website. The chart provided below identifies the types of ethical issues most frequently raised by the Ethics Hotline inquirers in the year 2005.

Frequently Named Ethics Issues by Percent	
	2005
Fees and Costs for Legal Services	17%
Conflicts of Interest	15%
Communications with Clients, Adverse Party and Others	12%
Attorney Advertising and Solicitation	10%
Misconduct/Moral Turpitude/Trial Conduct	9%
Client Confidential Information	7%
Unauthorized Practice of Law	7%

The Ethics Hotline staff obtains voluntary demographic data from the Hotline inquirers. Among the information obtained is whether the inquirer is a first-time or repeat caller to the Ethics Hotline. The information is provided in the chart below and includes data from 2005 and the two preceding years.

Ethics Hotline Inquiries
Percentage of First-Time and Repeat Callers



Publications

California Compendium on Professional Responsibility

The State Bar publishes the California Compendium on Professional Responsibility (Compendium), a compilation of local, state and national ethics information. It is updated annually. In 2005, 575 Compendium updates and new subscriptions were sold. Free online availability of the full text of State Bar ethics opinions and the Compendium index may be contributing to decreased subscriptions.

California Rules of Professional Conduct and State Bar Act

California Rules of Professional Conduct and State Bar Act (Publication 250) is a convenient resource book which includes: The California Rules of Professional Conduct (past and present); the State Bar Act; California Rules of Court related to the State Bar and members of the State Bar; various statutes relating to discipline and attorneys and the duties of members of the State Bar; the Minimum Continuing Legal Education Rules and Regulations; and the Rules and Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California). In 2005, approximately 2,500 copies of Publication 250 were sold. Free online availability of the key components of this publication may be contributing to decreased sales.

Handbook on Client Trust Accounting for California Attorneys

The Handbook on Client Trust Accounting for California Attorneys (Handbook) is a practical guide created to assist attorneys in complying with the record keeping standards for client trust accounts, which went into effect on January 1, 1993. The Handbook includes: a copy of the standards and statutes relating to an attorney's trust accounting requirements; a step-by-step description of how to maintain a client trust account; and sample forms.

In 2005, 199 copies of the Handbook were sold. The Handbook was updated in 2003, which resulted in increased sales that now have begun to decline to normal levels. Free online availability of this publication also may be contributing to decreased sales.

Ethics School Program Videotape

This video program was produced in 1994 and was designed to offer the highlights of the State Bar's Ethics School Program touching on the following four topics: formation of the attorney/client relationship; withdrawal from employment; client trust accounting; and reportable actions. The program is approved for one hour of Minimum Continuing Legal Education (MCLE) credit in legal ethics.

Special Projects

Annual Statewide Ethics Symposium

COPRAC conducted its 9th Annual Ethics Symposium on April 16, 2005 at Loyola School of Law in Los Angeles. The theme of the Symposium was "Expanding Ethical Responsibilities: Duties to Clients, Former Clients and Non-Clients." Three COPRAC sponsored panel discussions were presented entitled, "Attorney-Client Fee Agreements and Conflicts of Interest," "Lawyer Mobility and Conflicts of Interest" and "Conflicts and Duties to Non-Clients". Members of the Rules Revision Commission conducted a fourth panel discussion entitled, "Rules Revision Commission – A Dialogue About Current Issues." The Honorable Ignazio J. Ruvolo, Court of Appeals, First District, Division Two, and member of the Rules Revision Commission delivered a featured keynote speech. The event brought together experts from all aspects of the professional responsibility field including: ethics professors, judges, ethics consultants, State Bar staff, local ethics committee leaders, expert witnesses and representatives of the defense bar.

Annual Meeting Programs

In October 2005, the Office of Professional Competence administered five legal ethics educational programs at the State Bar's Annual Meeting in San Diego. The topics covered were: "Duty to Third Parties," "Recent Significant Developments Affecting the Law of Lawyers," "Methods for Identifying and Avoiding Conflicts of Interests," "How to Collect Your Fee and Avoid a State Bar Complaint," and "SLAPP and the Spiderman – American Inns of Court." In addition, a member of COPRAC participated in a program sponsored by the State Bar Intellectual Property Law Section entitled, "Multi-jurisdictional Ethics: California and Federal Law."

Local and Specialty Bar Association Outreach Programs

In cooperation with local and specialty bar associations, staff and COPRAC conduct outreach ethics programs at various locations. In 2005, COPRAC conducted the following presentations: the Whittier Bar Association and the Placer County Bar Association. Professional Competence staff presented the following presentations: the Kern County Bar Association and the Capitol City Legal Professionals Association.

Competence Resources on the State Bar Website

In 2005, the ethics and competence related resources on the Bar's website were updated and enhanced, including the following: 1) Rules Revision Commission meeting agendas, materials and action summaries; 2) year 2005 updates to the California Rules of Professional Conduct and The State Bar Act and other provisions governing the duties of attorneys; 3) COPRAC draft opinions and rule amendments circulating for public

comment; 4) COPRAC formal advisory ethics opinions; and 5) updates to the Professional Competence online ethics newsletter.

OFFICE OF CERTIFICATION

The Office of Certification develops standards for certification programs and protects the public by efficiently administering objective standards of such programs. The Office administers the following twelve programs:

Minimum Continuing Legal Education

(Business & Professions Code section 6070; California Rules of Court rule 958; State Bar Rules & Regulations)
All active members of the State Bar, unless exempt, must meet Minimum Continuing Legal Education (MCLE) requirements every three years. During 2005, the State Bar sent MCLE compliance cards to approximately 44,500 of its Group 2 members (last names H-M). During 2005, the State Bar suspended 227 members for non-compliance, most of which were Group 3 members (last names N-Z)). During 2005, the State Bar received 1,445 applications for provider and activity approval and renewed 418 providers. At the end 2005, there were approximately 1,347 approved providers. In addition, during 2005, the State Bar received 343 member credit requests.

Law Corporation

(Business and Professions Code section 6160 *et seq.*; State Bar Rules & Regulations)
Attorneys who wish to practice law as a professional law corporation must be registered with the State Bar. Registration requirements include showing corporate structure, possessing security for claims and having an approved name. Law corporations renew their registrations annually. At the end of 2005, there were 7,114 registered law corporations (an increase of 153 from the previous year).

Legal Specialization

(California Rules of Court rule 983.5; State Bar Rules & Regulations)
Attorneys may be certified to specialize in the following areas of law: appellate; criminal; estate planning, trust and probate; family; immigration and nationality; bankruptcy; taxation; and worker's compensation. An attorney must pass a written examination, possess special education and experience, and undergo reviews made by their peers and judges in order to be a certified specialist. Certified specialists must recertify every five years. Currently, there are 4,080 certified legal specialists (an increase of 143 from the previous year). In addition, the State Bar accredits entities who certify attorneys in the following areas: accounting malpractice, business bankruptcy, consumer bankruptcy, creditor's rights, civil trial advocacy, elder law, family trial advocacy, juvenile law (child welfare), legal malpractice and medical malpractice. Currently, there are five accredited certifiers.

The Legal Specialization Program also approves educational providers and activities. There are 80 approved providers and, in 2005, 144 educational activities were approved.

Limited Liability Partnerships

(State Bar Rules & Regulations)
Professional partnerships wishing to practice law as a Limited Liability Partnership (LLP) must register with the State Bar. Among other things, they must provide evidence of registration with the Secretary of State, a list of partners and have an approved name. The LLPs renew their registrations annually. At the end of 2005, there were 2,039 LLPs (an increase of 1 from the previous year).

Pro Hac Vice

(California Rules of Court rule 983)

Non-California licensed attorneys who intend to appear in California courts on particular cases must file a copy of a *pro hac vice* application with the State Bar. The State Bar assists the judicial system by maintaining a statewide record of those applications. In 2005, approximately 2,805 *pro hac vice* applications were filed with the State Bar (an increase of 111 from the previous year).

Practical Training of Law Students

(California Rules of Court rule 983.2; State Bar Rules & Regulations)

Law students who meet certain requirements may provide legal services under the supervision of an attorney. In 2005, the office processed approximately 1,603 Practical Training of Law Students certification applications (an increase of 53 from the previous year), as well as approximately 400 extensions.

Multi-jurisdictional Practice

(California Rules of Court rules 964-967; State Bar Rules and Regulations)

The California Supreme Court directed the State Bar to implement rules and regulations that permitted non-California attorneys limited authority to practice in California under a Multi-jurisdictional Practice (MJP) program. The program became effective November 15, 2004. The MJP programs consist of four categories of out-of-state attorneys who may provide legal services in California under four separate Rules of Court: Registered In-house Counsel (under rule 964), Registered Legal Services Attorney (under rule 965), Temporary Litigation Attorney (under rule 966) and Temporary Non-litigation Attorney (under rule 967). Registered In-house Counsel and Registered Legal Services Attorneys are required to register with the State Bar of California. At the end of 2005 there were approximately 600 In-house attorneys and 7 Legal Services attorneys registered.

Special Masters

(State Bar Rules & Regulations; California Penal Code section 1524)

Attorneys who wish to serve as a special master appointed by courts of record to accompany peace officers conducting searches for documentary evidence under the control of attorneys, physicians and clergy must submit an application to the State Bar. The State Bar maintains the list of attorneys who qualify for special master appointment. At the end of 2005 there were approximately 375 qualified special masters. (This is a decrease of 120 from the previous year.)

Out of State Attorney Arbitration Counsel

(California Rules of Court rule 983.4; State Bar Rules & Regulations)

Non-California licensed attorneys who intend to represent a party in the course of, or in connection with, arbitration proceedings in California must file an application on the State Bar. In 2005, approximately 307 applications were filed with the State Bar (an decrease of 11 from the previous year.)

Lawyer Referral Services

(Business & Professions Code section 6155; State Bar Rules & Regulations)

The State Bar must certify entities that operate for the direct or indirect purpose of referring potential clients to attorneys in California. These may be non-profit or for-profit entities. At the end of 2005, there were 64 certified lawyer referral services (an increase of 2 from the previous year.)

Foreign Legal Consultants

(California Rules of Court rule 988; State Bar Rules & Regulations)

Attorneys licensed to practice in foreign jurisdictions who wish to practice the law of that jurisdiction in California must meet certification requirements administered by the Bar. These include a required number of years of practice, security for claims for malpractice and dishonest conduct, and moral character review. At the end of 2005 there were 35 certified foreign legal consultants who were admitted in 20 different jurisdictions.

Military Counsel

(California Rules of Court rule 983.1)

Non-California attorneys who serve as judge advocates must file an application with the State Bar seeking permission to represent a person in the military service in a California court. In 2005, our office received no such requests.

GENERAL FUND AND MEMBERSHIP FEES

In 2005, the annual membership fee for active members was \$390. Members who declared that their annual income from the practice of law was less than \$40,000 were eligible for a waiver of 25 percent of the annual membership fee and if their total annual income from all sources was less than \$30,000 they were eligible for a waiver of 50 percent of the fee.

Most of the annual membership fee supports the State Bar's General Fund. A portion of the annual membership fee is assessed for the Client Security Fund (\$35), for the Building Fund (\$10) and for the Lawyer Assistance Program (\$10). The annual membership fee does not support the program for admission to the State Bar, which is a self-supported program. The annual membership fee does not support other programs considered non-germane to the practice of law; those are supported by voluntary contributions.

The State Bar's General Fund provides resources to operate programs that serve both the public and the Bar's active and inactive members. These programs include the attorney disciplinary system, administration of justice, governance, administration of the profession, program development and communications. The charts below show the annual expenditures for General Fund programs and the sub-programs within the Discipline Program that are supported by membership fees. For 2005, the Probation Unit is listed as a sub-program of Discipline. This sub-program was previously reported as part of the Office of Chief Trial Counsel. In 2003, the State Bar began allocating administrative costs to General Fund programs and sub-programs to better represent the true cost of these operating units. In prior years no such allocation was made and only direct program costs were reported.

GENERAL FUND		
2005 Actual Program Expenditures (Dollars in Thousands)		
Program	Amount	Percentage
Discipline	\$42,480	82.34%
Administration of Justice	750	1.45%
Governance	3,571	6.92%
Administration of the Profession	1,025	1.99%
Program Development	1,243	2.41%
Communications & CBJ	2,524	4.89%
<u>TOTAL</u>	\$51,593	100%

DISCIPLINE		
2005 Actual Discipline Sub-Program Expenditures (Dollars in Thousands)		
Discipline Sub-Program	Amount	Percentage
Office of Chief Trial Counsel	\$31,372	73.85%
State Bar Court	7,713	18.16%
Probation Unit	593	1.40%
Fee Arbitration Program	681	1.60%
Professional Competence	2,121	4.99%
<u>TOTAL</u>	\$42,480	100.00%

GLOSSARY

Admonition

A written non-disciplinary sanction issued in cases that do not involve a Client Security Fund matter or a serious offense. An admonition may be imposed by the Office of the Chief Trial Counsel or by the State Bar Court pursuant to Rule 264, Rules of Procedure of the State Bar of California.

Agreement in Lieu of Discipline

An agreement between the member and the Office of the Chief Trial Counsel in lieu of disciplinary prosecution, pursuant to Business and Professions Code sections 6068(l) and 6092.5(i).

Backlogged complaints

Complaints that have been pending in investigation longer than six full months from the date of receipt (12 months for complex cases) without dismissal, admonition of the member involved or the forward of a completed investigation for prosecution.

Client Trust Accounting School

A four-hour program designed to provide practical information to attorneys on the proper maintenance and handling of client trust accounts.

Complaint

A communication, which is found to warrant an investigation of, alleged misconduct of a member, which, if the allegations are proven, may result in discipline of the member.

Conviction Referral

A formal disciplinary proceeding following an attorney's criminal conviction commenced by a referral order from the State Bar Court Review Department directing the Hearing Department to hold a hearing, file a decision and recommend the discipline to be imposed, if any, or take other action on the issue or issues stated in the order.

Deny Petition/Application

See Probation, Denial of Petition/Application to Revoke.

Disbarment

A disciplinary action whereby the California Supreme Court expels an attorney from membership in the State Bar. The attorney's name is stricken from the Roll of California Attorneys and the attorney becomes ineligible to practice law. An attorney convicted of certain crimes may be summarily disbarred pursuant to Bus. & Prof. Code § 6102(c).

Dismissal

A proceeding closed by the Office of the Chief Trial Counsel or the State Bar Court and the charges are dismissed generally in the interest of justice, pursuant to an agreement in lieu of discipline or for some other specific reason, such as the case has no merit or there is insufficient evidence to prosecute the case.

Ethics School

An eight-hour program that focuses upon general principles of professional responsibility and law practice management and is designed to educate attorneys in methods they can utilize to avoid complaints being made to the State Bar.

Inquiry

A communication concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine if any action is warranted by the State Bar.

Involuntary Inactive Enrollment

The transfer of an attorney to inactive status (1) after the attorney is judged to present a substantial threat of harm to clients or the public, (2) after the attorney is judged to be unable to practice without danger to clients or the public because of a disability or (3) for other reasons allowed by state law. An attorney on inactive status cannot practice law.

License to Practice Cancelled

A disciplinary action whereby the State Bar Court recommends to the Supreme Court that an attorney's license to practice law be cancelled.

Notice of Disciplinary Charges

A document filed in State Bar Court containing formal charges against a member.

Private Reproval

A censure or reprimand issued by the Supreme Court or the State Bar Court which is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. No period of suspension is imposed. The reproval may be imposed with duties or conditions.

Probation

A status whereby an attorney retains the legal ability to practice law subject to his or her compliance with terms, conditions and duties for a specified period of time.

Probation, Revoke

A disciplinary action whereby the State Bar Court recommends the revocation of an attorney's probation imposed in a prior discipline case based on the attorney's violation of one or more terms of that probation.

Probation, Extend

A disciplinary action whereby the State Bar Court extends an attorney's previously imposed probation term.

Probation, Denial of Petition/Application to Revoke

A disciplinary action whereby the State Bar Court denies a motion for revocation of probation.

Public Reproval

A censure or reprimand issued by the Supreme Court or the State Bar Court which is a matter of public record. No period of suspension is imposed. The reproval may be imposed with duties or conditions.

Reinstatement

Readmission by the Supreme Court to the practice of law and to membership in the State Bar of a former member who resigned or was disbarred. The former member must demonstrate rehabilitation and present moral qualifications as well as ability and learning in the law.

Reproval

The lowest level of discipline imposed by the Supreme Court or State Bar Court. Reprovals can be either public or private. (See Private Reproval; Public Reproval.)

Request for Further Proceedings

A request from a complaining witness after being advised that the complaint has been dismissed or the member has been admonished.

Resignation Tendered with Charges Pending

A written relinquishment of the right to practice law and resignation as a member of the State Bar by a member against whom disciplinary charges are pending. Supreme Court acceptance of a resignation is required to make it effective, but as soon as a member submits a resignation in proper form, the member is transferred to inactive status and cannot practice law.

Resource Letter

A Resource Letter may be issued where there is a probable violation or a potential for a future violation of the Rules of Professional Conduct and/or the State Bar Act, which is minimal in nature and would not lead to discipline of the member. The member is referred to various resources, which may assist the member in avoiding future problems and/or the filing of complaints against him or her in the future.

Statement of the Case

An investigator's written report of information and evidence submitted to an Office of the Chief Trial Counsel attorney for further action.

Stipulation

A agreement between the member and the Office of the Chief Trial Counsel regarding a statement of facts, conclusions and/or disposition filed by the Office of the Chief Trial Counsel in the State Bar Court.

Suspension

A disciplinary action that prohibits an attorney from practicing law or from holding himself or herself out as a lawyer for a period of time set by the California Supreme Court. Suspension can be either stayed or actual.

Termination

A proceeding closed due to an external cause, such as death of the member, disbarment in a separate matter or resignation with charges pending.

Warning Letter

A Warning Letter may be issued when there is a probable violation of the State Bar Act or the Rules of Professional Conduct, which is minimal in nature, does not involve significant harm to the client or the public and does not involve the misappropriation of client funds.